

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill will reduce access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Florida Capital Formation Act

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a "fund of funds" basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold \$75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;

- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

Effect of Proposes Changes

The bill creates a public records exemption for certain information and trade secrets relating to the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes the following information confidential and exempt¹ from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets, as defined in the Uniform Trade Secrets Act,² held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation;
- Tax identification numbers;
- Analyses of gross receipts;
- Amount of taxes paid;
- Amount of capital investment;
- Amount of employee wages paid; and
- Detailed documentation to substantiate performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1467 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.96275, F.S., creating a public records exemption for information relating to the Florida Capital Formation Act.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1467 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

¹ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

² Chapter 688, F.S.; see s. 688.002, F.S.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Vagueness Issue

Lines 31 through 37 of the CS are not clearly defined and may not give appropriate guidance as to the specific kinds of information intended to be excluded from public records. In particular, the information

included in “the amount of capital investment” and “the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within portfolios of venture capital funds receiving investment...” is unclear and should be further defined.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill on March 30, 2006. The amendment removed references to the exemption of social security numbers, which are already exempted from public records under ch. 119, F.S., revised the references to the definition of “trade secret” as it is defined in s. 688.002, F.S., and made related technical clarifying and conforming changes.